

COMBATING CORRUPTION: LESSONS OUT OF INDIA

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ABSTRACT

This paper deals with the ubiquitous problem of corruption among public officials—both elected and appointed, in India. By looking at the legal and administrative provisions to combat corruption, it is shown how futile the attempts so far have been. Among the plethora of reasons for failure to combat corruption, it is concluded that the more important ones are the inadequate and inefficient enforcement mechanisms, lack of political will, and more importantly the cultural context of social tolerance and easy forgiveness. Any outrage that is there is largely confined to rhetoric, not action. Despite some helpful developments such as the newly conferred freedom of information, active investigative media and engaged civic groups, reasons for optimism appear to be minimal. The need seems to be a serious effort to develop sound norms by changing the societal culture, which places the premium on the shoulders of political parties.

“One cannot mandate honesty.”

Veerappa Moily, Chair,

Second Administrative Reforms Commission, 2007

India did not invent corruption, but it seems to excel in it. Preoccupation with the subject is almost ancient. While categorizing “forty ways of embezzlement” and as to how to deal with that, Kautilya made the following observation about human behavior:

“Just as it is impossible not to taste the honey or the poison that finds itself at the tip of the tongue, so it is impossible for a government servant not to eat up, at least, a bit of the king’s revenue. Just as fish moving under water cannot possibly be found out either as drinking or not drinking water, so government servants employed in the government work cannot be found out (while) taking money (for themselves).”

In its “India Corruption Study 2005”, Transparency International (TI) found as many as 62% of Indians believed corruption is real and in fact had first hand experience of paying bribes. Three-fourths in the survey also believed that the level of corruption in public services has only increased during 2004-2005. It is estimated that a total of about \$5 billion are paid annually as bribes. The police are ranked as the most corrupt, followed by lower judiciary and Land Administration.¹ In its September 2007 study, Corruption Perception Index, TI again placed India 72nd (tying with China and Brazil) with its neighbors Sri Lanka at 94th, Pakistan 138th and Bangladesh 162nd as among the most corrupt of the 180 nations that it surveyed.³ Yet, Suresh Pachauri, Minister of State for Parliamentary Affairs, Government of India, declared: “Government is fully committed to implement its policy of zero tolerance against corruption. It is moving progressively to eradicate corruption by improving transparency and accountability.”⁴ This is a rather sorry state for a country which is held up often as a proud example of a stable and fast progressing polity among the less developed countries (LDCs), and the most populous working democracy in the world.

Corruption conventionally is viewed as a transactional evil where money changes hands either in anticipation of favors, or favors already conferred. However, the more serious and pernicious “regime corruption,” where personal and partisan interests are confused

with, and/or substituted for, national interests and the general welfare of the populace has been studied elsewhere.⁵ The following pages are thus devoted to the study of the reasons for, and consequences of, corruption in its conventional sense, and the efficacy of measures taken in India to combat it.⁶ Studying the subject within the ecological perspective in the tradition of John M. Gaus and Fred Riggs,⁷ this paper is divided into the following sections. The first provides a brief introduction. The second explains the Indian context. The third and fourth examine administrative and political corruption, respectively. While the fifth discusses the available legal provisions and institutional arrangements, the sixth explicates the application of those measures. The final section draws some conclusions, followed by some suggestions.

INTRODUCTION

We start with the premise that corruption is antithetical to good governance any where. However, "the folklore of corruption" ⁸ must be approached with great caution as the very concept of corruption is fraught with many a pitfall. A simple and useful definition is given by Carl J. Friedrich. For him, corruption "is a kind of behavior which deviates from the norm actually prevalent or believed to prevail in a given context... It is deviant behavior associated with a particular motivation, namely that of private gain at public expense.... Such private gain may be monetary one, and in the minds of the general public it usually is, but it may take other forms."⁹ Several caveats, however, must be noted.

First, lacking a precise and universally accepted definition, often all and sundry actions, including inefficiency in performance, are considered as being corrupt in addition to its transactional facets. *Second*, the debate needs to be tempered by certain culture-specific imperatives. For example, in the Hindu culture, as is normal in other parts of the orient, while visiting an elder or a superior, one is expected to carry a gift, however small or inconsequential it is, as a mark of respect and not as an instrument of corruption (although it might serve that purpose too). *Third*, a distinction must be made between the magnitude (size of bribe), and frequency (its pervasiveness). *Fourth*, there is the issue of cause and effect in that who is to be blamed for the initiative— the client who offers the bribe or the official who demands/receives it?¹⁰ *Fifth*, there is often the confusion stemming from the failure to analytically distinguish between the conduct of elected public officials and that of the civil servants as the behavior of each group, after all, follows different imperatives— the former for electoral and personal reasons perhaps, and the latter because of need or greed. *Sixth*, there is a certain duality in less developed countries (LDCs) where personal life is judged by indigenous cultural standards while the official conduct is largely assessed under western norms. *Seventh*, moreover, in transitional societies norms themselves are in a constant state of flux due

to the nature of societal development process with individual behavior trying to catch up. In fact, corruption here is thought to be the grease that facilitates at least some things get done which otherwise would not¹¹.

There, however, is a shared belief that corruption is dysfunctional as it deviates from established norms. Hence it is illegal. It is inequitable as only those with resources can get things done, and those in crucial seats of power become rich due to unearned, or unduly earned, income. It is wasteful in an economic sense because resources are spent on an activity that did not deserve any further expenditure, to start with. It also leads to a lot of misery for the client who is often taken hostage. And of course, it is contrary to the tenets of good governance.

THE CONTEXT OF CORRUPTION

Before dwelling on pervasive corruption and the efficacy (or lack thereof) of several efforts to combat it, one must put the Indian scene in perspective. It is argued here that (i) the very diversity and the prevailing contradictions result in a certain normlessness, and (ii) the politico-economic system provides various power points and opportunities that allow corruption to flourish. The above are studied under three headings: demographic, economic and cultural.

(a) *Demographics*: India has an estimated population of 1.07 billion in 2004, speaking eighteen languages (besides English) and as many as 1,652 dialects. There are several religions with a predominant Hindu majority (81.3%) and the largest Muslim minority (12%). The average life span of 27 years at the time of independence in 1947, is now at 63.9 years. With an estimated GDP (Purchasing Power Parity– PPP) of US\$3.2 trillion and a 7.6 percent average annual growth rate, its per capita income was estimated by the World Bank at \$780 in 2006. Nearly a fourth of India's population lives below poverty line. With 66 percent of its population living in rural areas, India has only 54 percent of its land arable, and agriculture still contributes 24 percent of its GDP.¹² In June 2008 inflation rate stood at 11.05%– a thirteen year high, as against the Reserve Bank target of 5.5%.

It is also a land of stark contradictions. It is the most populous working democracy, with 29 States (including Delhi, which has semi-statehood) and 6 Union Territories. Yet, no constitutional status was provided for local self-government until the passage of the 73rd and 74th Amendments in 1992. To accommodate the great diversity, it opted for a federal form of government, but fearing fissiparous tendencies called it as the “Union of India.”

As the fifth largest economy in the world (by some counts fourth, certainly third in Asia– after Japan and China), and rated as the eleventh largest industrial nation, it still

has nearly two-thirds of its population living off agriculture, forestry and fisheries. With only 52 percent of its population literate, (State of Kerala in south boasts 90 percent while Rajasthan in north languishes at about 40 percent) the nation with 219 institutions of higher learning at the University level produces the second largest number of scientists and engineers in the world.

It had a woman Prime Minister, Indira Gandhi, who was considered to be one of the most powerful democratic leaders in the world, and was voted as the “Woman of the Century” in a poll conducted by BBC.¹³ But successive governments, as of today, have had trouble in getting a law passed to reserve 33 percent of all legislative seats for women (local bodies already have this quota). Although the nation has been struggling with the inequities of the caste system, it however, decided in 1990 to extend minority preference in public service to other backward classes (OBCs) whose definition was based predominantly on caste (further to the Mandal Commission recommendation in 1980).¹⁴

Ever since its 1974 explosion of a nuclear device and the 1998 tests of five nuclear bombs and several missiles capable of carrying nuclear warheads, India entered the select nuclear club. It, however, is not a signatory to the Comprehensive Test Ban Treaty. It fought three bloody wars with Pakistan, and was beaten by China in 1962. According to Washington-based World Watch, as far back as twenty years ago it led the Third World among arms producers (followed by Israel).¹⁵ But it professes to be the leader of non-aligned and peaceful nations.

While the country leap-frogged into the electronic age beginning in 1990, used electronic voting machines in its 2004 general elections and is now an Information Technology (IT) powerhouse, large part of India, rural as it is, still languishes in the age of the bullock-cart with little amenities. What with the low water tables, climate change, and the spurt in the growth of population, the last two years, India had to import wheat. Millions go hungry on a daily basis due to poor food distribution, or where available cannot afford to buy food due to lack of income.

Bharatiya Janata Party (BJP), which led the National Democratic Alliance (NDA) coalition government (defeated in the 2004 general elections) came into prominence after some of its followers destroyed the Babri mosque in 1992 which was allegedly built upon a Hindu temple.¹⁶ But once in power, it showed a good measure of secularism in a way when its appointments to the position of State Governors included a lower caste Christian, a Syrian Christian, a Protestant, a Muslim, and people of other religions.¹⁷ Contrarily, it not only exonerated, but also supported another of its party leaders – Chief Minister of Gujarat, Narendra Modi – who has been much criticized for his inability to prevent, and even accused by some of fomenting, large scale religious killings of Muslims. It must be noted, however, that while all parties talk of secularism

as enshrined in the Constitution of India, most every party continues to use religion for electoral advantage.

(b) *Economics*: On the political economy front, under the helmsmanship of its first Prime Minister Jawaharlal Nehru, the country started with the credo of “democratic socialism.” Unleashing massive social engineering, it resulted in one of the most administered states by capturing the “commanding heights” of the national economy. By 1990 however, it turned towards economic liberalization under its New Economic Policy (NEP). A traditionally hoarding culture has since changed into a fully consumer-oriented one worshipping wealth, no matter how it is accumulated. While under the previous economic regime it was the administrator who was considered to be corrupt, now the politicians have not only taken over the lead but also been co-opting the administrators.

(c) *Culture*: Despite the fact it is well modernized and westernized, India clings to a lot of its tradition, and more so to occult. It is important to take note here of the cultural dimension of the majority Indian population— the Hindus. Hinduism is not a proselytizing religion but largely a way of life. Not only other religions such as Buddhism and Sikhism emanated from it, it has also been largely tolerant and absorbing, at least till recently. Yet, when the country was partitioned on the eve of independence in 1947, religious fanaticism rose to such a level that it resulted in the largest migration of over 17 million people across borders in both directions between a predominantly Hindu India and the Islamic theocracy, Pakistan. And in 1971, as Pakistan was dismembered with the creation of a new nation, Bangladesh (out of former East Pakistan), as many as 10 million Bengali refugees poured into India, and to this day the eastern Indian States continue to agitate against these “foreigners.”

Hinduism in general is also personally forgiving in nature. An errant individual can always go to a superior (a religious leader, or simply one who is senior in age) and fall on his/her feet, literally and unashamedly, and the chances are that leniency will be shown almost immediately regardless of the fact the culprit may or may not have repented at all. Nirad C. Chaudhuri captured its essence thus: “The unlimited capacity to be a villain of the worst kind with an unlimited capacity for self-abasement before virtue and nobility is one of the most disarming traits of the Indian character....”¹⁸ Life at two different, and often contradictory, levels of existence for the Indian is not abnormal. Even the most debased material living can co-exist with a high abstraction of life. Deviance in personal and material life is accepted and forgiven when the search is for a purportedly higher truth. The present and the observed, for the Hindu, is only *maya*— illusion. Thus, two apparently contradictory, but not necessarily conflicting behavior patterns are manifest, and are tolerated.

Given all the contradictions and opportunities, corruption in India is ubiquitous.

Neither is this a modern day development; nor is it far different from the experience of other nations. The British colonial administration contributed generously to this scourge. To quote Cornwall Lewis, a member of the British House of Commons: "...no civilized Government existed on this earth which was more corrupt, more perfidious and more rapacious than the Government of the East India Company from 1765-1784."¹⁹ At least one Governor-General of India, Warren Hastings, was impeached (but exonerated) in Britain for all his misdeeds in India. Modern day India is no exception. For instance, the Central Vigilance Commission (CVC) recognized as many as 33 different modes of corruption.²⁰

ADMINISTRATIVE CORRUPTION

India's high ranking among the corrupt is already shown above. For analytical purposes, there are two types of corruption by public officials— the administrators (appointed civil servants), and the elected politicians.

It has been argued over and over that the established economic order, accorded ample opportunities towards administrative corruption. The earlier commitment to democratic socialism led to a great deal of state intervention through licensing of many an aspect of private entrepreneurship (and consequently to a bureaucratic stranglehold on private lives) resulting in the label of a "permit Raj."

The *Santhanam Committee* confirmed this as far back as in 1964: "The sudden extension of the economic activities of the Government with a large armory of regulations, controls, licenses and permits provided new and large opportunities (for corruption)."²¹ Planned development, observed Kuldeep Mathur, "considerably helped the bureaucrats to acquire administrative and political power, which expanded their role in the economy, permitting them greater opportunity to satisfy their self-interest."²²

Robert Wade summed up the situation the best, thus: "Several structural features of Indian society predispose the administrative and political system to a high level of corruption: acute scarcities; a large regulatory and allocative role of the state; a pre-eminent bureaucracy, faced with declining real salaries; a rapidly expanding middle class demanding access to the state."²³ N. Vittal, former Central Vigilance Commissioner (CVC), wrote:

*"Nearly half of those who avail services of most often visited public departments of Government in the country had the first hand experience of giving bribe at one time or the other. In fact, as high as two thirds of people think that corruption in these offices is real. However, one third think corruption is more exaggerated. And yet, 80 per cent of people are passive and hardly 20 per cent had ever complained about such corruption to any. It is interesting that while 50 per cent of the people reported that they had bribed, only 20 per cent took the trouble of complaining. This also highlights the need for sensitizing the public about the dangers of corruption."*²⁴

NEP since 1990, with its liberalization, inaugurated a neo-capitalist culture and whipped up a voracious appetite for accumulation of wealth. It has also transformed a largely traditional and hoarding society into a consumer nation with great abandon and amorality. In other words, the opportunity for corruption became abundant starting with a highly administered society to the current neo-liberal economy.

POLITICAL CORRUPTION

While a great deal has been said of administrative corruption, little attention was paid till recently towards the behavior of elected public officials and those aspiring for elected offices. The decline of the Congress party along with the disappearance of "tall" leaders who kept national interests ahead of everything else saw the growth of regional parties and "pulp culture" where regional and personal interests tended to stand above all else.²⁵ Public office is often seen as a good source for private gain. Political parties also have successfully helped criminalize politics and politicize crime. For example, in 2002 for the 403 seats in the State of Uttar Pradesh (UP) legislative Assembly there were 910 candidates from all parties contesting, 430 of whom were accused of assorted

crimes ranging from murder, rape, kidnaping for ransom, and dacoity. A Dhanajay Singh won the election despite the fact he was a “contract killer” with 43 different criminal cases pending against him including being the prime suspect in the murder of the State’s Medical Health Director, Dr. Bacchiter Singh.²⁶ Of those elected, 190 have had criminal records leading to a caustic comment that they might as well form the government by themselves, as they had a near majority.²⁷

In recent memory, former Prime Ministers Rajiv Gandhi and P. V. Narasimha Rao, besides other Cabinet Ministers, were accused of large scale corruption (both exonerated later.) Even the former Speaker of *Lok Sabha* (the lower House of Parliament), Balram Jhakar, faced major corruption charges. There were at one time as many as 46 different corruption cases pending before three special courts against the then Chief Minister of the State of Tamil Nadu, Jayalalitha Jayaraman. Bihar Chief Minister Laloo Prasad Yadav was forced to resign his office pending major corruption inquiries into what is known as the fodder scam which is yet to be resolved in 2008. (Paradoxically, he is now elevated to the national stage having been elected to the *Lok Sabha*, and rewarded with the Railway Ministry in the central Cabinet. Rumor was that he demanded, rather unsuccessfully the Home Ministry which would have given him some control over the investigations.) The list goes on and on resulting in the general cynical belief that all politicians by nature are corrupt, and that they seek public office to enrich themselves. Ironically, almost all the accused continue to be active political participants with impunity. News papers are replete with all sorts of stories of raids of houses of politicians, civil servants and businessmen. But very few spend time in jails; and if and when they did go to jail on rare occasions, there is no stigma attached, and soon are rehabilitated as they come out of jail.

Such state of affairs provoked the Election Commission (EC) to remark that **lawbreakers** have become **lawmakers**. It is argued that the electorate cannot make an informed judgement on the candidates running for office unless all the antecedents of each candidate are made public. To this end, the Association for Democratic Reform, comprising of several civic groups, went to court demanding the disclosure of the background of all candidates, as was recommended by the Law Commission in its 170th Report.²⁸ The Vohra Committee in 1993 also thought the same. On November 2, 2000, the Delhi High Court obliged and directed the EC to issue directives accordingly. But the BJP led NDA government appealed to the Supreme Court claiming that under Article 84 of the Constitution, the power to decide on the qualifications of candidates belonged to the Parliament, and the EC cannot step into this arena, even when there is no adequate legislation.²⁹

The Supreme Court in its May 2, 2002 decision, however, upheld the right of the voters to know the details on the candidates, and ruled that where legislation is silent the EC can indeed step in with directions. Consequently, asserting the importance of transparency in a democracy, the EC gave the necessary directions to the effect that all candidates running for a legislature (be at the States level or to the Parliament) should file an affidavit before the EC with full details of their past record on five counts: any conviction, acquittal or discharge of any criminal offence in the last six months prior to filing their nomination papers; any accusations in pending cases punishable with imprisonment of two or more years; assets (both movable and immovable) of self and those of spouses and dependents as well; any liabilities, particularly any dues payable to public financial institutions or Government; and the educational qualifications of one self.

But the Government of India, joined by 21 other political parties, thought otherwise and came up with a watered-down Ordinance (as the Parliament was not in session) on August 24, 2002, amending the Representation of the People Act of 1951, and sent it for the signature of the President. After a lot politicking and posturing by the government and other parties, the Ordinance was signed by the President into law. However, given the variance between the EC's directives and the new law, the Supreme Court was again moved by the National Campaign for Electoral Reforms (NCER) and others. The Court gave its decision on March 13, 2003, basically reiterating the previous 2002 decision which required full disclosure by candidates. Not only that, if a rival candidate were to file an affidavit with information contrary to what a candidate disclosed, such information must also be disseminated under this ruling of the Court.

In the new general elections in March-April 2004, it is said that 25 to 30 members of Parliament and 250 to 300 members of state Assemblies have had criminal histories. "The line between criminality and politics," observed a staunch advocate of political and electoral reforms, "is being erased in many parts of India...With coalition politics, the numbers speak. You are no longer able to make clean choices."³⁰

Mention must be made of at least two Ministers in the current Cabinet of the Congress Party led by Prime Minister Manmohan Singh who heads the UPA coalition of 19 different parties. Against one there are criminal charge sheets in a fodder scam that deprived him of the Chief Ministership of the State of Bihar (Laloo Prasad Yadav, holding the Railway Portfolio, as already seen). Another (Taslimuddin, who holds the Agriculture, Food and Civil Supplies portfolio), also from Bihar, has a criminal background.³¹ The opposition, led by the BJP made an issue of these "tainted Ministers" and had successfully stalled the parliamentary proceedings for a while. They even prevented the customary, polite "motion of thanks" following the President's inaugural speech to the new Parliament, forgetting that they had after all accommodated their own Defense Minister, George Fernandez, who initially resigned consequent to the Tehelka revelations, but returned to his office in no time (before the case is adjudged; see below).

Considering this general degradation, the Second Administrative Reforms Commission (henceforward ARC-2) observed in 2007 thus: "In our case, at times public office is perceived to be an extension of one's property. That is why, sometimes, public offices are a source of huge corruption and a means of extending patronage."³² Such patronage has been in a way institutionalized with the inauguration of the Members of Parliament Local Area Development Schemes (MPLADs), whereby each member of Parliament (MP) is entitled to spend about Rs. 20 million each year to purportedly develop individual constituencies.³³

Government agency demands for kickbacks for the party (parties) in power from even foreign firms are also known.³⁴ And the general populace has taken all this as a matter of course; it became second nature. Any client can attest to the fact that petty bribery is pretty common. The current high-stakes corruption is in the form of land-grab in the name of establishing Special Economic Zones (SEZs) or other purported economic development schemes. All this leads to the single naughty question: Aren't there laws and institutions to control corruption, if not eliminate it altogether?

LEGAL AND INSTITUTIONAL MEASURES

The short answer to the above question is not that there is any dearth of legal and administrative measures to deal with errant public officials; there indeed are several.³⁵ Section 161 of the Indian Penal Code (IPC) of 1860 established the initial legal source meant to deal with bribe-taking and favoritism. While no precise definition of the word “corruption” was provided, this Section gave the most comprehensive explanation of a corrupt person as one

“...being or expecting to be a public servant, accepts, or obtains, or agrees to accept, or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central or any State or with any public servant as such...”³⁶

This was followed by the Prevention of Corruption Act, 1947 which defined a new offense– “Criminal Misconduct in discharge of official duty” punishable by 1-7 years imprisonment. To protect innocent civil servants from harassment, it is also stipulated that no authority less than the one which appointed an officer could remove or punish otherwise. The sanctioning authority may be called in at the time of prosecution to adduce evidence on the sanction. Also, the complainant/bribe-giver is protected from prosecution as without such immunity no one might come forward to complain. Criminal Law (Amendment) Act, 1952 made some changes such as making abetting of offences an offence. All corruption related cases shall be tried only by special judges.

The First Five Year Plan in 1952 emphasized integrity in public life, and thought that corruption “not only inflicts wrongs which are difficult to redress, but undermines the structure of administration and the confidence of the public in administration. There must, therefore, be a continuous war against every species of corruption within the administration as well as in public life...”³⁷ In 1955, an Administrative Vigilance Commission was created within the Ministry of Home Affairs (later located within the Department of Personnel & Training) with the responsibility to provide direction and coordinate the various efforts of the Ministries to deal with corruption.

Perhaps the most important development in this context was the 1964 *Report of the Committee on Prevention of Corruption*, otherwise known as the *Santhanam Committee*, mentioned above. This Committee, following the logic that an executive body impartially inquiring into its own conduct is more or less an anomaly, recommended the creation of a Commission, headed by a Commissioner independent of the executive part of government, i.e., all Ministries. The government accepted it, and set up the Central Vigilance Commission (CVC) in the same year. Each Ministry also came to have a Vigilance Officer, whose appointment will be subject to the veto of the CVC Commissioner. The Prevention of Corruption Act of 1947 was also amended to make it a criminal offense to possess wealth disproportionate (which cannot be satisfactorily explained) to the income of a public servant.

Prevention of Corruption Act, 1988 consolidated the IPC along with all the Amendments. A new concept of “public duty” was added, and penalties were enhanced. It also sought expeditious trials, and stipulated that no court shall stay the proceedings on the grounds of any error or irregularity in the sanction granted unless in the opinion of the court it has led to failure of justice. The Act listed (a) offences of bribery and other related offences and penalties; (b) abuse of authority by favoring or harming someone, without any pecuniary consideration or gratification; (c) obstruction or perversion of justice by unduly influencing law enforcement; and (d) squandering public money.

In addition to the above, there are several Service Conduct Rules specifying the “dos” and “don’ts” for the civil servants. Article 102 of the Indian Constitution provides for the disqualification of any member of Parliament (a) for holding an office of profit; (b) declared of unsound mind by a competent court; (c) being an undischarged insolvent; and (d) for voluntarily acquiring a foreign citizenship and acknowledging foreign allegiance. (Article 191 deals similarly with State legislators.) There indeed have been occasions when a parliament member was expelled for holding a position of profit. (Yet, an Act of 1959 exempted several positions from this definition without any rule or rhyme— rather arbitrarily.)

Article 311 of the Constitution reiterated the former Prevention of Corruption Act provision that no civil servant can be prosecuted and punished by an authority subordinate to the one which made the original appointment. Further guarantees are provided for civil servants such as the right to be heard when charged of corruption during the investigation (but not when penalties are being imposed). Noteworthy is the provision which makes the appointing authority to make the final determination whether an inquiry is warranted at all (by giving its reasons in writing). Further, the President of India or the Governor of a State may prevent an inquiry in the name of national security. While this provision was originally intended to protect the civil servants from harassment, it in fact turned out to be a hindrance in that sometimes no consent was given by the appointing authority, or if given, it came too late and/or only grudgingly. Veerappa Moily, Chair, ARC-2, quoting the 2004 report of the Central Vigilance Commission showed that “out of the 153 cases for sanction, 21 cases were pending for more than 3 years, 26 cases between 2-3 years, 25 between 1-2 years. The departmental enquiries are soft-pedalled (*sic*) either out of patronage or misplaced compassion.”³⁸

Besides the Administrative Vigilance Division, there are three other institutions at the Union (federal) level: (i) the Central Vigilance Commission (CVC); (ii) individual vigilance units in each of the Ministries and Departments of the Government of India, central public enterprises and other autonomous organizations; and (iii) the Central Bureau of Investigations (CBI). The CVC advises the Government of India on all matters pertaining to the maintenance of integrity in administration, and supervises the CBI and other vigilance administration agencies. The CBI is the principal investigative agency of the central government in all anti-corruption matters. The arrangements vary from State to State, which have either Vigilance Commissions (eg. Tamil Nadu, West Bengal) or the *Lokayuktas* (or both such as the case in Andhra Pradesh). ARC-2 concluded that their working leaves much to be desired relative to the central apparatus. It also noted that while the number of cases of corruption keeps increasing, the number of cases disposed off remains relatively low. For example in 2005, of the 4,130 cases pending for trial at the centre only 265 were disposed of. At States level a total of

12,285 cases were pending in the same year, and only 2005 were disposed of. It is estimated that it would take about six years to clear the backlog in the States alone.³⁹

When a public servant is accused of corruption, the CVC may undertake an investigation on its own, or entrust it to the CBI or the concerned Ministry or Department itself. The resulting investigatory reports must be submitted to the CVC which would recommend to the Ministry proper action such as criminal prosecution. In case such a recommendation was not accepted by the Ministry, it should be noted in the report (of the CVC) to be placed before Parliament.

In addition to the above, the first Administrative Reforms Commission (ARC) in 1969 recommended the establishment of a *Lok Pal* (an Ombudsman) to oversee the conduct of Ministers and the Members of Parliament. But so far nothing happened although whether the Prime Minister's conduct should be subjected to the authority of a *Lok Pal* continues to be a matter of hot debate.

Besides the above governmental institutions, it is important to discuss the nascent investigative role of (A) the media and (B) other civic groups.

(A) *The Media*: India has always taken pride in a free press. Of late, the electronic medium has joined, what with the proliferation of private television channels and the dot.com entrepreneurs, to make up a new tool to curb corruption, or at least expose it. To illustrate the power of investigative journalism, a few egregious cases may be cited: (i) the Tehelka expose; (ii) the Petrol Pump scam; and (iii) the *Aaj Tak* episode.

(i) The Tehelka expose: Tarun Jit Tejpal launched a web site – Tehelka.com.⁴⁰ Investing a mere Rs. 210,000 (about US\$5,000 at current rate of exchange), he started a sting operation with a bogus company called West End International to sell an equally preposterous thermal camera to the Ministry of Defense. Trying to negotiate a deal, he ran 270 minutes of video tape which caught no less than the then President of the BJP, Bangaru Laxman, taking a bribe of a paltry sum of Rs.100,000 (about US\$2,300). It also showed the President of Samata Party, Jaya Jaitley, inviting the peddlers to the home of the then Defense Minister and the NDA Convener, George Fernandez, and receiving money supposedly for the party. (Jaitley's name was later struck out of the list of bribe-takers.) Several high-ranking military brass were also caught with their pants down, so to speak, asking for whiskey and women. The scandal reached to the Prime Minister's Office (PMO) as well with at least two turning up in the taped discussions – Brajesh Mishra and N. K. Singh, both close to Prime Minister A. B. Vajpayee.

As some juicy segments of the tape were shown on a private television channel in March 2001, the BJP led government was rocked. Laxman resigned in disgrace. Fernandez also resigned saying that he would keep out of the government till the investigations into the allegation are completed. However, not too long after, he returned to head the Defense Ministry as talk turned to a war– a possible nuclear one– between India and Pakistan. “Government Shamed & Crippled,” called one prominent front-page.⁴¹ Paradoxically, leaving aside the substance of the accusation, the messenger himself came to be investigated having been charged that he was financed by unsavory characters, in foreign countries to boot, to undermine the BJP and its NDA government. The government also claimed that the tapes were a fake. Nothing of any consequence occurred so far.⁴²

(ii) The Petrol Pump Scam:⁴³ On July 21, 2002, the widely read English daily, *The Indian Express*, broke a story that Ram Naik, Petroleum Minister in the NDA government, changed the procedures to license dealers to sell petrol, kerosene and cooking gas. The Chairpersons of the 59 three-member individual Dealer Selection Committees across the country were given virtual control over this process. It was also required that all applications be submitted through the state BJP chief's office. The net result, as reported, was that nearly one half of the 3,850 licenses went to NDA partners and relatives of BJP colleagues. Thus, this turned out to be a large exercise in political patronage. Not surprisingly, the opposition parties in Parliament jumped on the BJP which has claimed all along a higher moral ground, and asked for nothing less than the dismissal of the Petroleum Minister.

Prime Minister Vajpayee, stung as he was, canceled 3,565 licenses despite the fact that as many as 2,131 of them have already been in operation. He went on an offensive and pointed out that the previous Congress (I) government behaved no better in that their own Minister, Satish Sharma, was forced to resign for a similar patronage exercise in 1995 following severe strictures passed by the Supreme Court. It was also claimed that in the present allotment process some of the leaders of the Congress (I) have in fact made recommendations in favor of their own candidates or clients, thus proving no one is above board.

(iii) Perhaps a more telling and successful episode occurred on December 12, 2005, as a TV channel in its "Aaj Tak" program revealed that 11 members of Parliament belonging to various parties accepted money to raise questions in the Parliament regarding a fictitious company (North Indian Small Manufacturers Association—(NISMA). Based on the recommendation of a Parliamentary Committee, all were expelled on the 23rd, post-haste.

(B) *The rise of civic groups*: Many a civic group came up with participation by several high-profile concerned and committed individuals, including former Judges, higher civil servants and top brass of the army. For example, the *Foundation for Democratic Reform*, with its *sotto voce*, *Lok Satta*, is a "a non-partisan people's movement for reforms in the governance structure" in the country with the lofty goal that it is not interested in a "mere change of players, but change in the rules of the game" as such. (This organization is now a political party hoping to work from inside.) Several of these organizations have been on a literal crusade, some quite successfully, to empower the EC to make it mandatory that all candidates for elections must disclose their past life, so to speak (as seen below).⁴⁴

Several individuals also have taken recourse to what is known as Public Interest Litigation (PIL) to serve as watchdogs and move the courts on any suspected corrupt practice. While some well-meaning persons have rendered yeoman service using the PIL, it must be noted that on and off this tool tended to be misused on trivial grounds, or because of simple vendetta, thus downgrading its importance and contributing to its nuisance value. Some in the media also face charges of "manufacturing" news.

EFFICACY OF ANTI-CORRUPTION MEASURES

While the opportunities for corruption abound, the application of anti-corruption measures apparently leave much to be desired, as evidenced above. As is the case with any criminal offense, there are two phases in dealing with corruption of public officials—investigation of the crime and the subsequent prosecution. The institutions which are established to do the first in India came under severe criticism in that they had not done a proper job, or did not do the job at all in certain cases depending upon who the accused was. When indeed someone of substance is charged, (s)he almost always instantaneously and invariably claims some medical emergency or disability, real or feigned, just to stall the proceedings. While the court system itself has proved to be agonizingly slow, even not to present a case before a court as investigations are not completed is a near travesty of justice. The 1977 *Vineet Narain* case (otherwise known as the “hawala” case, involving violation of foreign exchange rules) grabbed national attention showing the total failure of anti-corruption enforcement measures.⁴⁵

To provide a gist of the case, consequent to an arrest on March 25, 1991, several raids were made on various premises of one S. K. Jain and his family. Large amounts of Indian and foreign currency, some notebooks, and a diary were seized in the process. The latter contained the initials of several high-ranking politicians, including the then Prime Minister Narasimha Rao, to whom vast amounts were said to have been illegally paid. But nothing was done to further investigate the matter which led to a PIL suit filed on October 10, 1993, before the Supreme Court of India.

The petition was to “command performance of the duty under law to properly investigate into the accusation of commission of crime and to file a charge-sheet in the competent court, if a prima facie case is made out.” The primary issue here was “(w)hether it is within the domain of judicial review and it could be an effective instrument for activating the investigative process which is under the control of the executive?” On December 8, 1997, the Court answered in the affirmative by invoking Articles 32 (right to move the Supreme Court for the enforcement of Fundamental Rights) and 142 (right of the Supreme Court to issue orders enforceable throughout the country for “doing complete justice”) as provided in the Constitution, and in defense of Rule of Law. It also observed: “Inertia was the common rule whenever the alleged offender was a powerful person.” Having found that the CBI and other investigative agencies had not performed their primary duties, the Court directed them to do just that by stating that “none stands above the law so that an alleged offence by him is not required to be investigated.” It is important to note that the Court here was not attempting to deal with the merits of the case as such. Its interest was limited only to see that investigations are conducted, and the process of justice moved on, without undue delay and political interference.

There were two other issues that came to the fore. One, under what came to be known as the “Single Directive,” the Government of India previously laid down that to investigate a higher public servant (at the policy making level), prior permission shall be obtained from the head of the office concerned. The Court thought such a requirement was inhibiting the investigatory process, and quashed it.

The second, and more importantly, to whom should the investigating agencies be accountable? In a parliamentary democracy the Cabinet Minister who is heading the Ministry/Department (working under the principles of collective responsibility and accountability to Parliament) must be the final referral point. But experience has been

such that several Ministers either soft-pedaled cases when they or their own ilk are involved, and worse, even tried to hush it up for either personal or partisan benefit. The Court did not hide its annoyance in this context, and consequently assumed for itself the supervisory responsibility by admonishing thus: "... (t)he CBI would not take any instructions from, report to, or furnish any particulars thereof to any authority personally interested in or likely to be affected by the outcome of the investigations into any accusation. This direction applies to any authority which exercises administrative control over the CBI by virtue of the office he holds, without any exception." The CBI thus was instead asked to report to the Court from time to time as to the progress of the investigation till the charge-sheets are filed in appropriate courts.

The Court did not stop there. It further observed: "The constitution and working of the investigating agencies revealed the lacuna of its (*sic*) inability to perform whenever powerful persons were involved. For this reason, a close examination of the constitution of these agencies and their control assumes significance. No doubt, the overall control of the agencies and responsibility of their functioning has to be in the executive, but then a scheme giving the needed insulation from extraneous influences even of the controlling executive is imperative."

As these proceedings were going on in the Court, the Government of India on July 1, 1993, constituted a Committee headed by the Home Secretary N. N. Vohra, who reported in a scathing tone how dismal the efforts to curb corruption were, and recommended the establishment of a nodal agency within the Home Ministry to compile all the information coming out of the various investigative agencies. The need for improving the procedures for the constitution, and monitoring the functioning, of the intelligence agencies was also recognized by this report.

Yet another Committee was later established (which included Vohra) headed by the Cabinet Secretary, which came to be known as the Independent Review Committee (IRC). Noting that the investigating agencies are subject to extraneous pressures leading to dilatory tactics, they made several recommendations such as the appointment of Special Courts to deal exclusively with foreign exchange rules violations, empowering the Enforcement Directorate (ED) to appoint special counsel for conducting trials, establish within the Ministry of Health medical boards to examine those accused who claim medical disability or emergency to stall the proceedings, and so on. Also recommended was that members of CVC be selected by a Committee, and the appointment be made by the President of India conferring statutory status on the Commission.

The selection of the CBI Director itself tended to be controversial in that the government of the day could pick its own minion to subvert any investigation, or transfer the incumbent to suit the needs of the day. Moreover, the CBI initially was located in the Prime Minister's office. Taking cognizance of this, the Supreme Court placed the CBI under the direction of CVC, and the CBI Director would henceforward be appointed by the Appointments Committee of the Cabinet (ACC) on the recommendation of a Committee consisting of the CVC Chair, Home Secretary and the Secretary of Personnel. Noteworthy is the fact that the latter two are civil servants who are beholden to the government of the day.

The appointment of the Chair of the CVC as well became a bone of contention. This appointment is crucial because (s)he would in turn help identify candidates to head the CBI (and other investigative agencies such as the and Enforcement Director dealing

with foreign exchange crimes). Pursuant to the Supreme Court directive, the BJP government passed an Ordinance by September 1998. But the Ordinance was not necessarily in compliance with the Supreme Court directive. For example: "The Supreme Court did not envisage a multi-member CVC; the ordinance does. The court did not specify that Vigilance Commissioner will be selected only from among civil servants; the ordinance does so. The Supreme Court did not include the Personnel Secretary as ex-officio member; the ordinance does. Having the Personnel Secretary as ex-officio member leaves the door open for influence-peddling by bureaucrats who may come under the scrutiny of the investigative agencies, since the former will have a major say in their posting to the top slots in government."⁴⁶ Moreover, the Single Directive which the Supreme Court thought was inhibiting the prosecution of higher administrators on corruption charges (and hence was quashed), was brought back in the Ordinance when it required the permission of CVC to prosecute any officials of Joint Secretary and above level and other officials of government Corporations and Companies appointed by the government.

The Ordinance, while providing statutory status on the CVC, prescribed that there would be a Central Vigilance Commissioner with a four year tenure, and three other Commissioners with 3 year terms each. They cannot be removed from office, but can be impeached. The appointments will be made by the President following the recommendation of a Committee consisting of the Prime Minister, Minister for Home Affairs, and the Leader of the Opposition in the *Lok Sabha*. While the Supreme Court directive stipulated that the CVC should be "from a panel of outstanding civil servants *and others* with impeccable integrity" (emphasis added), the Ordinance confined the appointment to a higher civil servant.

As an Ordinance would be in operation for only six months, and the government failed to follow it up with a law, all this lapsed on April 4, 1999. Finally the CVC Act was passed in 2003 retaining most of the provisions of the previous Ordinance except now it would consist of three members, one of whom will be the Chair– all holding a four year term. The opinions of CVC will be advisory, and it would pursue only those cases referred to it by the government. It would also supervise vigilance officers in all central Ministries and Departments. The CBI continues with its police powers of investigation, but suffers from several infirmities in its efforts at combating corruption. The first pertains to the very appointment of the Director who is picked out of nominees suggested by a three member Committee where the majority is held by civil servants, as seen above. This led to a rhetorical question by a Joint Director (of the Anti-Corruption Head-quarter Zone) who said: "Can two slaves guarantee freedom to a third slave?"⁴⁷

The CBI is also short on its staff with just over one thousand investigating officers (IOs). On top of all this, one need to think of the time it takes to clear corruption cases, assuming that proper clearance is given by the appointing authority. ARC-2 showed that the average time taken by trial courts under the Prevention of Corruption Act is enormous. In 1996 there were 8,225 cases pending, but in 2005 the number grew to 12,703. And thus, it recommended that there must be some time limits to dispose off these cases.⁴⁸

In tune with this dismal state of affairs, it is no surprise that not a single politician involved in the (in)famous "hawala" case was convicted. While the CBI claims to have a 72.1 percent conviction rate,⁴⁹ it is noteworthy that no big fish is ever caught or convicted which led to the caustic comment by a B. R. Lall, once an insider who

thought that its dealings were not equitable. He observed: "It was dealing differently with people in power, people not in power and people out of power or favour. The CBI was functioning like any other department of government, carrying out executive commands rather than working impartially and fearlessly upholding the Law of the Land."⁵⁰

Another shortcoming is to be noted here in that the Prevention of Corruption Act does not apply to the private sector. The only recourse to bring them to book is by invoking the 'abatement' provision, mentioned above.

CONCLUSIONS AND SUGGESTIONS

The crucial question then is why corruption in India abounds despite numerous institutional arrangements and a plethora of legislation. Could it be due to the impossible human nature, as Kautilya observed above? It is theorized by several that corruption is endemic in Less Developed Countries (LDCs) for various reasons: unequal access to, and disproportionate distribution of, wealth among the rich and the poor; public employment as the only, or primary, source of income; fast changing norms and the inability to correspond personal life patterns with public obligations and expectations; access to power points accorded by state controls on many aspects of private lives; poor, or absent, mechanisms to enforce anti-corruption laws; general degradation of morality, or amoral life styles; lack of community sense, and so on.⁵¹ The Indian case fits into this analysis. But it has more lessons, and yields several other clues.

First, the emphasis so far has been mostly not so much on correcting the reasons for corruption as is the effort to deal with the practices and outcomes of corruption. There are only two basic reasons for corruption: need and greed. The prevalence of administrative corruption could perhaps be ameliorated to an extent by better pays for civil servants. Indeed, in March 2008, the Sixth Pay Commission recommended hefty pay raises all over, and one might hope that this could alleviate need, at least at the bottom end. But then there is ample evidence that even in the higher paying nations corruption is prevalent leading one to conclude that it is simply a matter of size, not that of kind which is translated as greed. But greed is a part of prevailing cultural norms, and it becomes a habit when no stigma is attached. The capacity for tolerance attributed to Indians as part of their culture has profound impact here. Except for rhetoric and the occasional nodding of heads, no outrage is seen, much less serious implementation of anti-corruption measures. The *Santhanam Committee* aptly observed thus: "In the long run, the fight against corruption will succeed only to the extent to which a favourable social climate is created."⁵²

Second, the duality in Hindu life leads the same person proclaim a "holier than thou" attitude but often indulge in the most debased life. And the liberal, almost amoral, attitude that appears to have taken hold since economic liberalization in 1990 only encourages this life style further. While deriding the all-pervasive corruption intellectually and certainly rhetorically, people are all out on an acquisition binge. Thus nothing positive and constructive emerges to stem the general rot.

Third, the very laws, rules and regulations to curb corruption are themselves corrupted insofar as they are not often followed strictly in their spirit, or in fact followed only in the letter on occasion. If at all, they are applied selectively and in some places as a matter of show, and in other cases as a means of vendetta. H. L. Mansukhani correctly

concluded that the Prevention of Corruption Act turned out to be a "puerile piece of legislation."⁵³

Fourth, paradoxically, sometimes the very Rule of Law and the various rights guaranteed to the civil servants in the name of assuring their neutrality and accord protection from harassment have been found to come in the way of bringing the errant to book. As noted, Article 311 of the Constitution of India (requiring permission of the appointing authority to prosecute) proved to be a major hurdle.

Fifth, there is not only the absence of sound role models, but also an apparent lack of political will to reform. Further, the current trend of coalition governments abet a great deal of corruption. Pressured as they are to survive in office, unscrupulous leaders resort to all sorts of illegal, amoral, and even unconstitutional means. In an effort just to remain in office, coalition governments have been succumbing to the pressures of their partners who have learnt that they can get a lot of political mileage by simple threats of withdrawal of their support, and by using, or attempting to use, legal and Constitutional provisions as partisan tools. In a way, the coalition governments are turning out to be hostages of pure partisan and personal interests. The all-consuming effort of these governments appears to be no more than keeping in office. It is worth mentioning what the ARC-2 said: "It is generally believed that all these...types of wilful abuse of office are on the increase in our country at all levels and need to be firmly curbed if we were to protect public interest and our democratic system. Otherwise, public servants—elected or appointed—will be seen not as custodians of public interest and sentinels of democracy but as opportunists working for personal aggrandizement and pursuing private agenda while occupying public office."⁵⁴

Sixth, the same recommendations to curb corruption are made *ad infinitum* but no concrete steps are taken. For example, appointment of a *Lokayukta* (Ombudsman) was recommended by the first Administrative Reforms Commission in 1969 and is repeated nearly forty years later by ARC-2 in 2007⁵⁵ as nothing happened since the first recommendation. Only a shallow debate goes on whether the office of the Prime Minister be subjected to the authority of such an Ombudsman.

Seventh, even when the corrupt are brought to book, there is the lack of expeditious disposal of cases due to the slow investigative mechanism and a slower judicial process. Prime Minister, Manmohan Singh, admitting that corruption is a challenge for his government, recognized the need for more special courts.⁵⁶

In the absence of effective institutions and the poor application of laws, perhaps the most crucial element in combating corruption is the social attitude towards corruption. As already noted, honesty cannot be legislated. No amount of legal restrictions would help so long as the society itself is lenient and tolerant. It is thus hard to decide which is the cause and which is the effect: Is the society permissive, or is a corrupt regime corrupting the society? The traditional Sanskrit usage, *yatha raja, tatha praja* (as is the king, so is the populace) is often cited to blame the regime. Contrarily, there is the cynical theory that a people get a government that they deserve. Indeed, the top public leaders have to set an example with the political parties taking the lead, and the nation as a collective entity ought to show its intolerance, and give the corrupt the boot. A clear and clean sweep of the polity, it appears, thus is the task at hand. One cannot but wonder how much more developed India could have been, if only the rot is stemmed.

Among the aggravating factors, the British colonial legacy is recognized as one by ARC-2. While this may be true, sadly three generations have passed since independence

with nothing much of a dent in corruption. If only, it is more rampant now. With measures such as the inauguration of decentralization of power scheme (under the 73rd and 74th Amendments to the Constitution) meant to empower the large masses, and the Freedom of Information Act which came into force in 2006 probably leading to transparency, strengthened by the several active media outlets and civic groups one might be tempted to be optimistic as to the future. It may not have been a lost cause altogether. To conclude in the words of ARC-2:

“Indians have always valued a world beyond the material and have embraced spiritualism as a way of life. Instances abound in our epics of good behaviour, of the triumph of good over evil, of the wisdom of sages. Stories of the honesty, generosity and piety of legendry kings such as Vikramaditya, are told to our children even today. There is no reason why Ram Rajya cannot be attempted.

In modern India, poverty, insufficiency and class conflicts are slowly giving way to a confident, inclusive, empowered India. On the Transparency International’s Corruption Index, India’s position has improved significantly, and hopefully will continue to do so. The vigilance of our enlightened people will ensure this.”⁵⁷

One can only hope that they are correct, and their optimism is not altogether misplaced. Yet, a lot positive remains to be seen.

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¹ *Kuately's Arthasastra*, transl. by R. Shama Sastry, 8th ed., (Mysore: Mysore Printing and Publishing House, 1967), pp. 67 and 71. The original work by Kautilya (aka Vishnugupta and Chanakya) is dated to be sometime between 321 and 296, B.C. See, also, Upendra Thakur, *Corruption in Ancient India* (New Delhi: Abhinav Publications, 1979).

² The survey conducted about eleven public services, dealing with not only perceptions but also actual experience, was rather extensive with a sample of 14,405 respondents covering 20 States. See the press release of June 30, 2005 at

http://www.transparency.org/regional_pages/asia_pacific/india_corruption_study_2005.

³ Denmark, Finland and New Zealand stood at the top as the least corrupt, while Myanmar and Somalia are ranked at the bottom as the most corrupt. See, Transparency International, *Transparency International Corruption Perception Index*, http://www.transparency.org/layout/set/print/policy_research/surveys_indices/cpi/2007

(At the time of this writing, it is reported that in 2008 India was ranked at 74th, thus falling down two places.)

⁴ <http://www.ndtv.com> 19 March, 2008. Pride is taken in that India's standing improved from the 83rd position in 2003. But note that this survey covered only 133 nations, but in 2007 there were 180.

⁵ See, for example, Krishna K. Tummala, "Regime corruption in India," *Asian Journal of Political Science* 14, No. 1 (September 2006), pp. 1-22; and "Developments in Indian Federalism," same journal 15, No. 2 (August 2007), pp. 139-160.

⁶ A preliminary discussion of the subject may be seen in Tummala, "Corruption in India: Control Measures and Consequences," in *Asian Journal of Political Science* 10, No. 2 (December 2002), pp. 43-69.

⁷ John M. Gaus, *Reflections on Public Administration* (Alabama: University of Alabama Press, 1947); Frederick W. Riggs, *The Ecology of Public Administration* (Bombay: Asia Publishing House, 1961). Noting that the ecological study implies that any administrative process must be studied within the given environment, Riggs later expanded the concept by making an analytical distinction between "environment" and "context."

⁸ The reference here is to the attitudes of people and their perception that the majority of public servants are corrupt. See, Gunnar Myrdal, *Asian Drama: An Inquiry into the Poverty of Nations, Vols. I & II* (New York: Twentieth Century Fund, 1968), p. 408.

⁹ Carl J. Friedrich, "Corruption Concepts in Historical Perspective," in Arnold J. Heidenheimer, Michael Johnston and Victor T. LeVine, eds. *Political Corruption: A Handbook* (New Brunswick: Transaction Publishers, 1989), p. 15. Also, Friedrich, *The Pathology of Politics: Violence, Betrayal, Corruption, Secrecy and Propaganda* (New York: Harper & Row, 1972), pp. 127-141.

¹⁰ For example, the World Bank reports that 45 percent of all business people admit that they regularly indulge in corrupt practices. Whether they do this voluntarily or under coercion, or simply follow the established practice is not clear. World Bank, *World Development Report: 1997-- The State in A Changing World* (New York: Oxford University Press, 1997), p. 36.

¹¹ See, for example, the discussion in Samuel P. Huntington, *Political Order in Changing Societies* (New Haven, CT: Yale University Press, 1968), pp. 59-71.

¹² Data culled from various sources: *India Today* (5 July, 2004), p. 17; US CIA, *World Fact Book, 2004*, www.odci.gov/cia/publications/factbook/geos/in.html; and [www.http://news.bbc.co.uk/south_asia/countries_profiles](http://news.bbc.co.uk/south_asia/countries_profiles) (May 16, 2008).

¹³ BBC poll, on the Internet (1 December 1999).

¹⁴ See, Tummala, *Public Administration in India* (Singapore: Times academic Press, 1994), Chapter IX.

¹⁵ Between them, India and Israel were said to be producing more than half of Third World arms as far back as in 1989. *The Times of India* (29 May 1989), p. 14.

¹⁶ See, Tummala, "Democracy vs. Fundamentalism: Religious Politics of the Bharatiya Janata Party in India," in Santosh C. Saha, ed., *Religious Fundamentalism in the Contemporary World: Critical Social and Political Issues* (Lanham, MD: Lexington Books, 2004), pp. 207-234.

¹⁷ *India Today* (29 November, 1999), p. 7.

¹⁸ Nirad C. Chaudhuri, *Thy Hand, Great Anarch! India: 1921-1952* (London: Chatto & Windus, 1987), p. 787.

¹⁹ Quoted in M. V. Pylee, *Constitutional History of India, 1600-1950*, 2nd Rev. ed. (Bombay: Asia Publishing House (P) Ltd., 1980), p. 4.

²⁰ The 33 modes of corruption are listed under two categories: practices involving the public, and those internal to administration. The former include bribery over tenders, contracts, quotas and licenses; acceptance of substandard stores; forgery and conniving at false assessments of claims and income-tax; irregularities in transport bookings; intentional delays in order to obtain "speed money," bribery for performance of what should be normal duties, or for their non-performance; acceptance of gifts to use influence; misuse of powers; and carrying on private business under cover of official duties.

Corrupt practices internal to the administration cover misappropriation of public money and of stores; production of false claims for allowances and reimbursement, and of forged certificates of age, community, educational qualifications, etc., abuse of official position or powers; acceptance of illegal gratification in recruitment, postings, transfers and promotions; misuse of government employees for private work; misuse of advances sanctioned for purchases and leave travel concessions; cheating in connection with the sale and purchase of land; and unauthorized occupation and sub-letting of government residential quarters. *Report of the Central Vigilance Commission, 1966* (New Delhi: Government of India, 1966), pp. 15-16 and 32-33. This perhaps is an improvement from the calculations of Kautilya, whose list exceeds numerically that of the CVC!

²¹ K. Santhanam, *Report of the Committee on Prevention of Corruption* (New Delhi: Government of India Press, 1964), p. 7.

²² Kuldeep Mathur, "Bureaucracy in India: Development and Pursuit of Self-Interest," *Indian Journal of Public Administration* XXXVII, No. 4 (October-December 1991), p. 639.

²³ Robert Wade, "The Market for Public Office: Why the Indian State is no Better at Development," *World Development* 13, No. 4 (1985), p. 486.

²⁴ N. Vittal, *Corruption in India* (New Delhi: Academic Foundation, 2003), p. 181.

²⁵ The nomenclature here is that of Selig Harrison. See his, *India: The Most Dangerous Decades* (Princeton, NJ: Princeton University, press, 1960), especially Chapter 3.

²⁶ See, <http://headlines.sify.com> (26 February, 2002).

²⁷ Vinay Krishna Rastogi, "In UP 'criminals' could even form a govt!," www.headlines.sify.com (9 July, 2002).

It is reported that there were at least 96 armies of gangsters operating in UP with nearly 57 of them patronized by one political party or the other. As many as 209 candidates contesting the 1996 elections had criminal records, with 10 of them already convicted. Thirty-two of those elected had criminal records. See, *India Today* (15 April, 1999), p. 25.

In the case of Bihar, during 1991-99 there had been 58,565 murders, 18,485 kidnappings, 8,377 rapes, 495 political murders, and 390 massacres. See *The Hindu On Line* (14 February, 1999), 7.

²⁸ The Law Commission was appointed by the Government of India to thoroughly review the Representation of People Act of 1951 “to make the electoral process more fair, transparent and equitable, and to reduce the distortions and evils that have crept into the Indian electoral system.” Quoted by the Supreme Court in its March 2, 2002 judgement on Civil Appeal No. 7178 of 2001 along with Writ Petition (C) No. 294 of 2001.

²⁹ The pertinent cases are: *Association for Democratic Reforms v. Union of India and Others*, Writ petition No. 7257 of 1999, and the appeal, *Union of India v. Association for Democratic Reforms*, Civil Appeal No. 7178 of 2001.

³⁰ Statement is attributed to Jayaprakash Narayan, Coordinator, Federation for Democratic Reform, *New York Times* (26 May, 2004), p. A13.

³¹ See the “Cabinet line-up,” and the relevant commentary in *India Today* (7 June, 2004), pp. 10-23.

³² The Second Administrative Reforms Commission (ARC-2), appointed by the President of India in 2005, *Fourth Report: Ethics in Governance* (January 2007, unpublished), para 2.6.4.

³³ See, V. Ramachandran, “A Chronic Aberration,” *Economic and Political Weekly* XL, No. 19 (May 7-13, 2005), pp. 1965-1967. A Review essay of the book by Era Sezhiyan, *Members of Parliament Local Area Development Schemes (MPLADs): Concept, Confusion, Contradictions* (New Delhi: Institute of Social Sciences, 2005), pp. 1965-1967.

³⁴ For example, *Green Markets* reported that such demands made on American fertilizer trade firms alone would have yielded Rs. 250 million for the Congress (I) Party as three to five dollars were kicked back on each ton of fertilizer imported into India. See the report in *Indian Express* (Hyderabad) (2 August, 1989), p. 1.

³⁵ For an analysis of corruption and a long list of statutes dealing with it see, for example, J. B. Montiero, *Corruption: Control of Maladministration* (Bombay: Manaktalas, 1966), L. Michael Hager, “Bureaucratic Corruption in India: Legal Control of Maladministration,” *Comparative Political Studies* 6, No. 2 (July 1973), pp. 197-219; Leslie Palmier, *The Control of Bureaucratic Corruption* (New Delhi: Allied Publishers Private Limited, 1985); R. K. Nigam and V. G. Kesary, eds. *Public Sector Management and Vigilance* (New Delhi: Documentation Center for Corporate Business Policy Research, 1982); and N. S. Chakravarthy, “Management and Administration in India— Impact of Vigilance Machinery,” *Indian Journal of Public Administration* XXXVI, No. 4 (October-December 1990), pp. 845-868; and ARC-2, *op. cit.*, Section 3, “Legal Framework for Fighting Corruption.”

³⁶ Quoted by B. Venkatappiah, “Office, Misuse of,” in David L. Sills, ed., *International Encyclopedia of Social Sciences*, vol. II (New York: Macmillan, 1968), p. 272.

³⁷ *First Five Year Plan*, p. 115.

³⁸ Veerappa Moily, ARC-2, *op. cit.*, in his “Preface” (no para number).

³⁹ ARC-2, *op. cit.*, paras: (4.2.1) and (4.2.2).

⁴⁰ Prior to the current Defense scandal, this group exposed the infamous cricket match-fixing scandal.

⁴¹ See, *India Today* (21 March, 2001).

⁴² A Commission headed by Justice K. Venkataswami was appointed by the government to investigate the defense scandals, but the Justice resigned quickly in disgust.

⁴³ Information is gathered from several stories in the print medium on the internet such as *The Indian Express* (*Sunday Exclusive*), www.indian.express.com (August 22, 2002) and

www.timesofindia.indiatime (22 and 23 August, 2002); also, Rajeev Deshpande, "Filth in the Fuel," *India Today* (19 August, 2002), pp. 10-12.

⁴⁴ For details see, on the internet: www.loksatta.org. There are too numerous organizations to be listed here.

⁴⁵ *Vineet Narain et al v. Union of India et al*, 1998 1SC 226. All the quotes that follow in the text, unless otherwise specified, are from this decision.

⁴⁶ Sudha Mahalingam, "Vigilance Commission: Issues for Vigilance," *Frontline* 15, No. 19 (12-25 September, 1998), p. 4.

⁴⁷ See, B. R. Lall, *Who Owns CBI: The Naked Truth* (New Delhi: Manas Publications, 2007), pp. 219-220.

⁴⁸ ARC-2, *op. cit.* Para 3.2.5.1.

⁴⁹ "Conviction Rate: A Reality Check," study by Shatrujeet Kapur, Deputy Inspector General of Police, Jaipur, <http://www.cbi.gov.in/performance/realtycheckstudy.pdf>

⁵⁰ Lall, *op. cit.*, p. 15. It should be noted that Lall, an officer of the Indian Police Service, may not be the most impartial person himself. He was shunted out of the CBI, and claimed that the then Director, who was a friend of the then Prime Minister Narasimha Rao, did not like Lall's vehement efforts to pursue the "hawla" case against the Prime Minister, much against the will of Director. The Director of course has a different take on this who claimed inefficiency on the part of Lall.

⁵¹ See for example, Braibanti, "Reflections on Bureaucratic Corruption," *Public Administration* (London) 40, No. 4 (Winter, 1962), pp. 357-372; Colin Leys, "What is the Problem About Corruption?" *Journal of Modern African Studies* III, No. 2 (April 1965), pp. 467-497.

⁵² *Santhanam Committee, op. cit.*, p. 101.

⁵³ H. L. Mansukhani, *Corruption and Public Servants* (New Delhi: Vikas Publishing House, 1979).

⁵⁴ ARC-2, *op. cit.*, para 3.2.1.8.

⁵⁵ See ARC-2, *op. cit.*, paras, 4.4.3), (4.4.6) and (4.3.14), respectively.

⁵⁶ All India Radio news, <http://www.newsonair.com> (April 29, 2008).

⁵⁷ ARC-2, *op. cit.*, para, 1.3 and "Conclusion" (no para number).

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